

*REMARKS/ARGUMENTS*

In response to the Office Action mailed October 17, 2008 Applicants amend their application and request reconsideration. In this Amendment, no claims are cancelled, and new dependent claims 26-29 are added so that claims 1, 2, 4-15, and 22-29 are now pending.

*Request for Personal Interview*

Applicants' representative requests, unless the Examiner resolves to allow this patent application, upon consideration of this Response, a telephone contact for a prompt personal interview to discuss the issues in this patent application. The foregoing Amendment, for the reasons supplied below, is believed to place the application in form for allowance, which Applicants earnestly seek. Any remaining issues, fundamental or minor, may be resolvable in a personal interview.

*This Amendment*

Careful attention has been given to all of the comments from the Examiner in the Office Action mailed October 17, 2008. Those comments are responded to in more detail below, particularly in view of certain errors that appear within the comments. Among the comments made by the Examiner is one at page 10 of the Office Action questioning whether the catheter is an environmental element or part of the claimed invention. To remove any ambiguity with regard to this point, the claims have been revised to make clear that the invention is directed to a combination of a catheter and the container including a housing and latchable lid. All claims have been amended to accommodate this clarification.

The claims are further clarified with respect to the invention as described and illustrated by particular embodiments in the patent application. The catheter includes a supporting body that contains a reservoir. The supporting body has first and second

ends, basically an outlet and an inlet at which the part of the catheter implanted in a patient and a supply tube, i.e., an external tube, are respectively connected to the supporting base. In the typical use of a catheter, a fluid is infused into the patient and flows from the external tube through the supporting base including the reservoir, further through the part of the catheter implanted into the patient, and, thereafter, into the patient. This flow establishes a direction of fluid flow that is defined in the amended claims.

With that reference direction established, the orientation of the first and second pads on the internal face of the lid is described more precisely. With respect to the embodiment of Figure 1 of the patent application, for example, those pads are elements 13. It is apparent from the description of the patent application, as well as from all of the figures, that those pads 13 extend generally parallel to the fluid flow direction and are clearly not transverse to that fluid flow direction. Amended claim 1 also describes the first end of the reservoir as being at the first chamber. This arrangement is apparent from each of the figures which shows that the first end of the reservoir 3 is adjacent the first chamber 8, in which the catheter is implanted in the patient. Further, the passage 10 that provides communication between the first and second chambers 8 and 9 is described more clearly.

The foregoing clarifying amendment of claim 1 is also incorporated into each of the other independent claims, claims 22, 23, and 25. In addition, the dependent claims are amended, without a change in substance, to conform to amended claim 1 and for additional clarity. Applicants draw attention to dependent claim 7 which also relates to the final paragraph of independent claim 23. That claim is directed to external pads on the internal face of the lid that penetrate into the first chamber of the housing and hold in place the part of the catheter that is implanted in the patient. These external pads correspond, in the embodiment of Figure 1, to the pads 14, as should be apparent from former as well as current claim 7 and 23. By contrast with the pads 14, the pads 13, when the lid is closed, are received within the second

chamber 9, not within the first chamber 8, and straddle the supporting base of the catheter, not the part of the catheter that is implanted in the patient.

As shown by the foregoing discussion, all of the claim amendments are supported by the patent application as filed.

### *The Prior Art Rejection*

Former claims 1, 2, 4, 5, 7-10, 14, 15, and 22-25 were rejected as unpatentable over Landuyt (U.S. Patent 6,387,076) in view of Bierman (U.S. Patent 7,153,291, hereinafter Bierman I). This rejection is again respectfully traversed.

In spite of the presentation of additional and different arguments in this Response, none of the previous arguments are withdrawn. Rather, those arguments are incorporated by reference. Fundamentally, Applicants do not agree that one of skill in the art would, from Landuyt and Bierman I, find a suggestion for the invention as defined by the former claims or the claims that are now presented.

As previously discussed, Landuyt describes a container including a lid and a base that are hinged together and that may be latched and released. The base of the container may be attached to the skin of a patient in whom a catheter has been implanted. The catheter consists of a single tube that enters an opening 12 in the base and extends through a "locating region 16. The tube of the catheter fits into the V-shaped retainers at opposite ends of the locating region 16. The catheter tube is clamped in that locating region by small protrusions 15 on the floor of the locating region and a plurality of spaced apart rectangular teeth 35 that project outwardly from an internal surface of the lid. Those teeth 35 comprise a gripping means so that when the lid is latched to the base, the teeth 35 are transverse to the tube 4 of the catheter. The teeth thereby apparently clamp or grip the catheter tube 4, perhaps in combination with the protrusions 15, to prevent movement of the catheter tube 4 along the longitudinal direction of that tube, i.e., the direction of the flow of a fluid through the catheter 4.

Bierman I is understood to be relied upon as describing the catheter depicted in Figure 1 that includes a conical catheter fitting 12. A wing 18 projects from opposite sides of the conical fitting. The catheter 10 includes, at one end of the fitting 12, a threaded rim 16 for attachment to a fluid source and, apparently at the other end, the part of the catheter that is implanted in a patient.

It is the premise of the rejection that one of skill in the art would somehow force the fitting 12 of Bierman I into the locating region 16 of Landuyt, substantially modifying Landuyt so that the lid of Landuyt could somehow close on the fitting 12 of Bierman's catheter, thereby clamping the catheter in place. Applicants continue, as already stated, respectfully to disagree with this hypothesis because it is not reasonable when both Landuyt and Bierman I are considered together.

In addition to the previously presented arguments, it is apparent that even if the hypothetical combination of the prior art rejection were made, the result could not be and would not suggest the invention as defined by the claims presented here.

According to the Office Action at page 3, the gripping means 34 comprising teeth 35 of Landuyt are functionally equivalent to the first and second pads described in the claims. This assertion has never been correct and cannot be correct with respect to the claims presented here. First, if the Bierman I catheter were inserted into the container of Landuyt, the teeth 35 could never contact and bear on the wings of the Bierman I catheter. Rather, as apparent to anyone of skill in the art, those teeth would contact the conical fitting 12 and could never reach the wings 20 of the Bierman I catheter. The amended claims make readily apparent that the pads contact the wings, precisely the same meaning as the former term "bear on" that was not been given a proper interpretation, considering the scope of the disclosure and the meaning of the common English word used in the former claims. Thus, this unreasonable ground of rejection must now be withdrawn.

Applicants note the Examiner's reference at page 10 of the Office Action to gravity as providing a force driving the Landuyt or Bierman I catheter against the bottom wall of the second chamber of Landuyt. Reference to gravity, in view of the

mass of the catheter, seems nearly irrational. While gravity would, of course, provide some pull of the catheter, the pull would be infinitesimal. Further, the pull would only be against the base of the Landuyt container if the base of the container were horizontal. There is no reason to expect that the container in Landuyt or in the present invention would be oriented in any particular orientation with respect to a horizontal plane. Therefore, considering the mass of the elements involved and the absence of any requirement of any particular orientation of the container, either in Landuyt or the present claims, the Examiner is requested to delete any gravitational concept with respect to further examination of the pending claim.

As already described, the teeth 35 the Landuyt container are always transverse to the fluid flow direction of the catheter. By contrast, the first and second pads of the invention are always parallel to the fluid flow direction. The teeth in Landuyt, as already described, tend to crush the catheter 4 and may impede fluid flow. By contrast, the first and second pads in the invention, being parallel to the direction of fluid flow, do not threaten to crush any part of the catheter or interfere with the flow of whatever fluid is being supplied through the catheter.

To meet the limitation of the claims concerning the described orientation of the pads, there would have to be some basis for rotating the teeth 35 of Landuyt 90°. There is no such teaching or suggestion in Landuyt. In fact, making that rotation would vitiate the entire function and purpose of those teeth. In other words, the principle or operation of Landuyt would be so changed by that reorientation, which could only be based upon hindsight reconstruction of the invention, that no rejection can be properly founded upon that hypothesis. See MPEP 2143.01 VI., the proposed modification used in a rejection cannot change the principle of operation of a reference.

Because of the differences between the invention as described in the former and amended claims, as enumerated here, in the preceding paragraphs, and in the former Response, upon reconsideration, the rejection based upon Landuyt and Bierman I should be withdrawn.

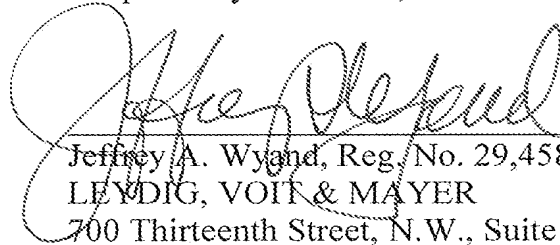
The rejections of dependent claim 7 and of independent claim 23 require particular and independent attention. As already noted, those claims describe, on the internal surface of the lid, two external pads that, when the lid is closed, are received in the first chamber. Claim 7 was commented upon at page 5 of the Office Action mailed October 17, 2008. According to second full paragraph at that page, "Landuyt further teaches pads which penetrate the *second* chamber to secure the catheter...". Applicants acknowledge that the teeth 35 in Landuyt that are received within the locating region 16 of the Landuyt container. However, the Examiner has already stated that the first chamber of Landuyt "is taken to be encompassed by opening 12 and enlarged portion 14,". See the Office Action at page 3, line 5. There are no pads or other elements in the Landuyt container that ever penetrate into what has been defined as the first chamber. It appears that sufficient attention to the detailed language of claims 7 and 23 may not have been given in the previous examinations. If the Examiner intends to maintain the rejection of claims 7 and 23, she is invited to point out what elements in the prior art might correspond to the external pads of claim 7 and 23, which correspond to the pads 14 of the embodiment of Figure 1 of the patent application. Otherwise, the rejection must be withdrawn, independent of any other action that is taken.

Claims 6 and 11-13 were rejected as unpatentable over Landuyt in view of Bierman I and further in view of tertiary references, including a second patent to Bierman. However, the rejections of those four dependent claims are founded upon the assertion that claim 1 is obvious over Landuyt in view of Bierman I. Because that fundamental rejection is erroneous, as demonstrated above, the rejections of claims 6 and 11-13 cannot be maintained upon the withdrawal of the rejection of claim 1. Therefore, further comment on the rejection of those dependent claims is not necessary nor provided.

New claims 26-29 describing the lid as transparent are supported in the patent application as filed at page 10, lines 25 and 26. No similar feature is described by Landuyt and, of course, Bierman I is irrelevant to that feature. Thus, those claims are clearly patentable over any potential combination of Landuyt and Bierman I.

Reconsideration and allowance of all claims now pending are earnestly solicited.

Respectfully submitted,



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